

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

EARL DAVIS SR.,

Plaintiff,

v.

E. CLOAK, S. REED, and R. VINCENT,

Defendants.

Case No. 1:22-cv-01632-JLT-HBK (PC)

ORDER DISCHARGING ORDER TO SHOW  
CAUSE

(Doc. No. 28)

ORDER GRANTING MOTION FOR  
EXTENSION OF TIME

(Doc. No. 29)

Plaintiff Earl Davis Sr. (“Plaintiff”) is a state prisoner proceeding pro se and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff proceeds on his first amended complaint (“FAC”) alleging various constitutional claims. (*See* Doc. No. 14). On July 19, 2023, the Court issued an Order to Show Cause (“OSC”) why it should not recommend the district court dismiss this case for Plaintiff’s failure to timely respond to the Court’s June 6, 2023 Screening Order. (Doc. No. 28). In response, Plaintiff filed a Motion for Extension of Time (Doc. No. 29, “Motion”) and a Notice to Proceed on the claims found cognizable in the Court’s June 6, 2023 screening order (Doc. No. 30, “Notice”). The Court will discharge the OSC and grant Plaintiff’s Motion.

**BACKGROUND**

On June 6, 2023, this Court issued a screening order of Plaintiff’s FAC finding it stated cognizable First Amendment interference with mail and retaliation claims against Defendants E.

1 Cloak, S. Reed, and R. Vincent but no other cognizable claims. (*See* Doc. No. 26). The  
2 screening order required Plaintiff to either (1) file an amended complaint consistent with the  
3 screening order; (2) file a notice with the Court that he is willing to proceed only on the claims  
4 the court found cognizable in its screening order; or (3) stand on the FAC subject to the  
5 undersigned recommending the district court dismiss certain claims and defendants. (*Id.* at 17-  
6 18). On July 19, 2023, after the deadline to respond had passed, the Court issued an OSC  
7 directing Plaintiff to show cause, no later than August 7, 2023, why the undersigned should not  
8 recommend the district court dismiss Plaintiff's case for failure to prosecute and comply with a  
9 court order. (*See* Doc. No. 28). On July 24, 2023, Plaintiff filed a Notice that he wishes to  
10 proceed with the claims found cognizable in the screening order and voluntarily dismiss the  
11 remaining claims and Defendants. (Doc. No. 30). The same day, Plaintiff filed a Motion, which  
12 effectively asks the Court to accept his untimely response to the June 6, 2023 screening order.  
13 (Doc. No. 29). Although Plaintiff's two filings were signed on July 18, 2023, prior to the  
14 issuance of the OSC, the undersigned construes them as timely responses to the OSC.

15 Considering Plaintiff's Notice, construed as a timely response to the OSC, the  
16 undersigned will discharge the OSC and respond by separate order to the Notice. Further, the  
17 Court grants Plaintiff's Motion to the extent it accepts Plaintiff's untimely response to the June 6,  
18 2023 screening order.

19 Accordingly, it is ORDERED:

- 20 1. The July 19, 2023 Order to Show Cause, (Doc. No. 28) is DISCHARGED; and  
21 2. Plaintiff's Motion for Extension of Time (Doc. No. 29) is GRANTED as set forth above.

22  
23 Dated: July 25, 2023

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25 HELENA M. BARCH-KUCHTA  
26 UNITED STATES MAGISTRATE JUDGE  
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